Supreme Court, U.S.
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No. 87-539

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

THE REV. VERNON ROBERTSON - - Petitioner

versus

CITY OF LOUISVILLE, BY AND THROUGH THE URBAN RENEWAL & COMMUNITY DEVELOPMENT AGENCY OF LOUISVILLE - - - - - - - - - Respondent

Petition for a Writ of Certiorari to the Court of Appeals of Kentucky

REPLY BRIEF FOR PETITIONER

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October 30, 1987

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THE REV. VERNON ROBERTSON - - *Petitioner*

v.

CITY OF LOUISVILLE, BY AND THROUGH THE URBAN RENEWAL AND COMMUNITY DEVELOPMENT AGENCY OF LOUISVILLE - *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY

REPLY BRIEF FOR PETITIONER

May it please the Court:

This is a case in which Petitioner, a priest in the Roman Catholic Church, and Pastor of St. Martin's Church, located near his properties, has resisted Respondent's eminent domain taking as arbitrary because the results, at great unnecessary expense, will be the destruction of good housing; an exodus of long settled neighbors and tenants from the neighborhood; the slashing intrusion of a roadway dividing the affected block into two triangles, neither of which would be attractive for residential housing; the deleterious effect on the remaining housing, and Montessori Schools and other church activities in the neighborhood.

The purpose of this Reply Brief is to point out that the Respondent made an incorrect and unfair statement in its Counterstatement of Material Facts, page 4 of its Brief, namely:

> "There was *no* evidence presented at the trial concerning safety hazards to either school children or the elderly in getting too (sic) or from this church."

The Transcript of Evidence is to the contrary. Father Robertson testified that more traffic will affect not only the schools, but people visiting the church sponsored restaurant and coming to church for parochial reasons (TE, Vol. I, p. 20, included in Appendix). The urban historian, Dr. Kramer, testified that the existing Gray Street was a narrow street without a heavy degree of traffic and that it was easy for people to move back and forth across that street and into the surrounding buildings (TE, Vol. I, p. 34, included in Appendix) and that the proposed connector would make it more difficult for people to get to church (TE, Vol. I, p. 37-39, also in Appendix). The traffic engineer, Mr. Lee, also testified that the proposed plan would be detrimental to the properties because it would change the character of them by increasing traffic on Gray Street (TE, Vol. II, p. 13-14, reproduced in Appendix).

Respectfully submitted,

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TRANSCRIPT OF PROCEEDINGS

Testimony of Father Robertson

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are made into less attractive things. You have a pile of traffic going through with houses on either side that won't have the same privacy that they've had before. And I wanted to see that maintained.

Q. Do you have an opinion regarding the effect of this, this proposal on of the Montessori School?

A. Well, it's hard to determine exactly what they're going to do with the traffic. It appears to me that the traffic is going to be increased; that we now will have a corridor on Gray Street. The Montessori School has a 50 children that wander in and out and sometimes use the hall across the street, and we have to be careful as it is with traffic moving. What I gather—it's sometimes hard to know whether it will be one-way or two-way, parking or no parking, but just the whole thing of dealing with much more traffic will affect not only the school but people stopping at the restaurant and coming into the church to visit for parochial reasons or—it just turns us into a corridor instead of a city block where people can meet and talk and go to church and do things that I think they have been doing there for quite a while.

Q. Do you have any opinion on any other effects of the realignment?

Mr. Vissman: Same objection.

The Court: Continue. Go ahead.

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Testimony of Dr. Kramer

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living in a shotgun house next to a reasonable prosperous merchant living in a two-story Italianate house.

Q. What observations did you make with respect to the sub-neighborhoods, particularly the block on which Father Roberts (sic) three properties are, now four properties, and with respect to the contiguous block where the church is?

A. That again, those blocks have a large degree of internal integrity; that there is a strong tie with the church. The street, Gray Street was never, to at least my finding, a street that carried a heavy degree of traffic. It was a street that was built at a time that fairly narrow streets carried as much human as they carried vehicular traffic. Therefore were a nub of social interaction as well as transportation, or vehicular transportation. Therefore, it's a street that had the effect, and I clarify that as opposed to necessarily intent, to make it easy for people to move back and forth across the street and interact with each other and with the surrounding buildings.

Q. Do the three properties that are the subject of this lawsuit owned by Father Robertson play any role in the fabric of the neighborhood?

A. Certainly.

Q. Will you explain that?

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A. I think the fundamental effect would be to severely diminish social interaction, movement back and forth is difficult. It would be difficult to move, or much more difficult to move across that 40 feet of concrete as it goes through the community. It would make it more difficult

to have social interaction, for people to move to and from either one part of the block to the other. Of course, it would eliminate part of the considerable number of the people who are there and reduce the number of people who are there to interact. It would make it more difficult for them to get to the church, more difficult for the church to carry out its mission to the people it is there to serve.

Q. What, if anything, would this do to the integrity of the block?

A. I think it would fundamentally alter the integrity of the block.

Q. For the better or for the worse?

The Court: I somehow read that in—

The Witness: It would be a considerably dilatorious effect on the block. Certainly by eliminating the housing, the affordable housing for the people in the neighborhood, but making it much more difficult for them, those who remain.

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By Mr. Cohen:

Q. What would this proposed connector do with respect to the St. Martin's neighborhood?

A. I think it would make it more difficult for the people who remained in the neighborhood to get to the church effectively.

Mr. Vissman: Your Honor, if you'll note my continuing objection. This is not historic, it's moving people.

The Court: You can look out there and see what the road's going to do.

The Witness: I think historically you can say that roads are as much a way of moving people as they are of moving vehicles. And large expansions of concrete, wider streets, heavily trafficked streets make it difficult for people to move from one side to the other, especially if children are moving.

There is a pattern that once you get a certain degree of traffic, it simple makes it more difficult for people to get across the street.

The Court: You know, I think I could have testified to that, in that one area.

By Mr. Cohen:

Q. Have you come to any conclusion about

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what the overall effect of this proposed corridor and realignment will have on this neighborhood if it's built?

A. I think, in general conclusion, it would have an effect of generally wiping out a considerable number of viable, working-class housing units. It would weaken the overall social interaction and the general fabric of the community and make it much more difficult for St. Martin's Church to carry on its mission in that community?

Q. Is there anything else that you would like to add that you think might be of some of aid to the court in deciding the question before it?

A. I think I have just about summed up—

The Court: You may thing of something again when Mr. Vissman . . .

How many questions do you have?

Cross-Examination by Mr. Vissman:

Q. Doctor Kramer, when you talk about the neighborhood, you're talking about this particular block we're discussing? You're not talking about the entire Phoenix Hill neighborhood, are you?

A. Generally speaking, I'm talking about

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Testimony of Mr. Lee

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under the plan or is this existing street just one way?

The Witness: You talking about Gray between Campbell and Shelby?

The Court: Where it drops off coming south and then. (Indicating)

The Witness: If you're coming south and then west, it would be two-way at this point down to the intersection of the new street and Gray.

The Court: Right.

The Witness: At my point, it's my understanding, it would be one-way from Gray west to Shelby.

The Court: It's not going to be that enlarged street?

The Witness: It's my understanding that there is no—but it's presently wide enough for two lanes in each direction plus parking on one side. It would be just reversing the flow and directing traffic into it which does not now exist.

The Court: I understand.

By Mr. Cohen:

Q. What would be the effect of this proposed plan on the properties on either side of Gray Street between Campbell and Shelby?

A. Well, I think it would be detrimental to those properties. It would change the character of them by having traffic routed through the street of a character that does not now exist, with trucks, other kinds of traffic. Granted, they're not prohibited today, but it's not an arterial classification of street, it's strictly a local street that serves. So it would, in my opinion, be detrimental to those properties.

Q. What would be the effect of this proposed plan on the area on the east side of Campbell from Gray to Chestnut.

A. Well, I think the—first the taking of a viable residential structure on the corner begins to destroy the fabric of it for a residential neighborhood. That is a brick house that could be maintained in a very attractive condition. There is a house at 909, it's freshly painted, very neat, so there is interest in the neighborhood as a residential one but I have concern that by making this cut through, cutting off the back corners of those lots, of running a major four-lane arterial through that block is going to make it much less desirable as a residential enclave to serve as a needed housing where, as I have said before, intrastructure exists, or have need for housing that is

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